

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KRYSTEL H HOLTZ
Claimant

WALMART INC
Employer

APPEAL 21A-UI-08435-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/24/21
Claimant: Appellant (3)**

Iowa Code section 96.4(3) – Eligibility – Able to and Available for Work

STATEMENT OF THE CASE:

On March 25, 2021, Krystel Holtz (claimant/appellant) filed an appeal from the March 23, 2021 (reference 02) unemployment insurance decision that denied benefits as of January 24, 2021 based on a finding claimant requested and was granted a leave of absence.

A telephone hearing was held on June 8, 2021. The parties were properly notified of the hearing. The claimant participated personally. Walmart Inc. (employer/respondent) did not register a number for the hearing or participate.

Claimant's exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUES:

Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on September 15, 2016. Claimant requested and was granted a medical leave of absence from December 24, 2020 through January 14, 2021. Claimant returned to work on January 15, 2021, with a restriction that she be allowed to use a stool as needed. Claimant has degenerative disc disease, bone spurs, and arthritis. This restricts claimant's ability to sit or stand for long periods and also limits her ability to lift, pull, reach, and so on. Claimant's medical condition was not caused or exacerbated by a work-related illness or injury.

Claimant worked within these restrictions for about two weeks without incident. Claimant was working full-time during this period. Then, on or about February 1, 2021, claimant learned that she may not be able to continue to use a stool while working due to not having a formal accommodation through employer's third-party HR company, Sedgwick. Claimant spoke with her People Lead and this was confirmed.

Claimant immediately contacted Sedgwick regarding this issue. Sedgwick informed claimant that she could not return to work without a release from her doctor. Claimant provided a release which restricted claimant to use of a stool while working. However, for reasons that are unclear, Sedgwick delayed in processing the request. Claimant was not able to return to work until April 15, 2021.

By then, claimant's condition had worsened and her doctor had restricted her substantially more. From that date she was restricted from sitting or standing for long periods of time and restricted from lifting, bending, reaching, and so on. Claimant was not able to perform the duties of her position within this restriction. Employer accommodated claimant by placing her in an alternative, light-duty position and allowing intermittent leave as needed. Claimant has since then been scheduled for 40 hours per week but typically works about 24 hours due to the need to take intermittent leave for her medical conditions.

Claimant filed a claim for benefits each week from the benefit week ending January 30, 2021 through the benefit week ending May 29, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the March 23, 2021 (reference 02) unemployment insurance decision that denied benefits as of January 24, 2021 based on a finding claimant requested and was granted a leave of absence is MODIFIED in favor of appellant. She is eligible for benefits as set forth below.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin.

Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Employers are required to make reasonable accommodations for employees with disabilities under state and federal law. See Iowa Code § 216.6; 42 U.S.C.A. § 12112. An employee who can perform the essential functions of a job with or without a reasonable accommodation is able to work. *Sierra* at 723.

Claimant did not request a leave of absence during the period she filed for benefits. However, she was working full-time through February 1, 2021 and so was employed to such an extent as to be unavailable for work during that period. After that time she was able to perform the duties of her position with a reasonable accommodation and was being held out of work due to a delay in processing her request. She is therefore able and available for work and eligible for benefits from the benefit week ending February 6, 2021 and continuing through the benefit week ending April 17, 2021.

However, after that time claimant's doctor put in place restrictions which made her unable to perform the duties of her position with or without a reasonable accommodation. Employer accommodated claimant by assigning her to a full-time light-duty position and allowing intermittent leave as needed. Any reduction in hours after that time was due to claimant being unable to work. She is therefore ineligible for benefits effective with the benefit week ending April 24, 2021.

DECISION:

The March 23, 2021 (reference 02) unemployment insurance decision that denied benefits as of January 24, 2021 based on a finding claimant requested and was granted a leave of absence is MODIFIED in favor of appellant. She is eligible for benefits as set forth above.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

June 23, 2021
Decision Dated and Mailed

abd/ol

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.